



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0183]**

**RIN 1625-AA00**

### **Safety Zone; Philippine Sea, Rota**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters off the Port of Rota. The Coast Guard believes this safety zone is necessary to protect all divers participating in this underwater military exercise from potential safety hazards associated with vessel traffic in the area. This safety zone will prohibit persons and vessels not involved in the exercise from being in the safety zone unless authorized by the Captain of the Port Guam (COTP) or a designated representative.

**DATES:** This rule is effective from 11 a.m. to 11 p.m. on September 16, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0183 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email call or email Chief Todd Wheeler, Sector Guam Waterways Management Division, U.S. Coast Guard; telephone 671-355-4866, email [WWMG Guam@uscg.mil](mailto:WWMG Guam@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The purpose of this rulemaking is to ensure the safety of divers in the water during an underwater military exercise in support of the biennial Exercise Valiant Shield from 11 a.m. to 11 p.m. on September 16, 2018.

In response, on May 21, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Philippine Sea, Rota (83 FR 23400-23402). There, we stated the background and proposed regulatory action, and requested comments on our proposed regulatory action related to this safety zone. During the comment period that ended June 20, 2018, we received no comments.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Guam (COTP) has determined that potential hazards associated with the exercise will be a safety concern. The purpose of this rule is to protect all divers participating in this underwater military exercise from potential safety hazards associated with vessel traffic in the area.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published May 21, 2018. The Exercise Valiant Shield coordinator did send an updated time for when the

divers will enter the water. The safety zone has moved up seven hours from the previous safety zone that was proposed in the NPRM. The changes are reflected in the regulatory text of this rule.

This rule establishes a safety zone from 11 a.m. to 11 p.m. on September 16, 2018. The safety zone will cover all navigable waters two miles off of the Port of Rota. This safety zone is necessary to protect all divers participating in this underwater military exercise from potential safety hazards associated with vessel traffic in the area. This proposed rulemaking would prohibit persons and vessels not involved in the exercise from being in the safety zone unless authorized by the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and

time of day of the safety zone. Vessel traffic would be able to safely transit around this safety zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for 12 hours that will prohibit entry into navigable waters 2 miles off the coast of the Port of Rota; however, vessel traffic would be able to safely transit around the safety zone. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received

without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0183 to read as follows:

#### **§ 165.T14-0183 Safety Zone; Philippine Sea, Rota.**

(a) **Location.** The following area is a safety zone: All waters off of the Port of Rota, from surface to bottom, encompassed by a line connecting the following points beginning at 14°08'07" N, 145°08'00" E, thence to 14°08'53" N, 145°06'51" E, thence to 14°09'12" N, 145°07'13" E, thence to 14°08'16' N, 145°08'08" E, and along the shore line back to the beginning point. These coordinates are based on NAD 1983.

(b) **Regulations.** (1) The general regulations governing safety zones contained in § 165.23 apply. This proposed rulemaking would prohibit persons and vessels not

involved in the exercise from being in the safety zone unless authorized by the Captain of the Port (COTP) Guam or a designated representative.

(2) To seek permission to enter, contact the COTP Guam or the COTP's representative by VHF channel 16 or by telephone at 671-355-4821. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) Enforcement period. This section will be enforced from 11 a.m. to 11 p.m. on September 16, 2018.

Dated: July 13, 2018.

CHRISTOPHER M. CHASE,  
Captain, U.S. Coast Guard,  
Captain of the Port Guam

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